IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 957 OF 2007.

Rajeshkumar Dhirajlal Patel ..Applicant
V/s
State of Maharashtra & Anr. ..Respondents.

Mr. Gajendra Jadhav, Advocate for the applicant.
Mrs. Y.S. Shinde, APP for the State.

CORAM : J.H. BHATIA, J.

DATE : 11TH APRIL, 2007.

P.C.

. Heard Mr. Jadhav, learned Counsel for the applicant and Mrs. Shinde, learned APP for the State. The applicant is accused in Reg. Criminal Case No.89/2001 pending on the file of Judicial Magistrate, F.C., Dapoli. The matter is under Prevention of Food Adulteration Act. The case is pending for last about 6 years on the basis of incident which had taken place in October, 2000. On 10/1/2007 the matter was fixed for recording evidence before charge. However, on that day the applicant-accused remained absent and filed application for exemption from personal attendance. That application came to be rejected and on the request of the prosecution, the learned Magistrate directed to issue non-bailable warrant against the applicant. In

the impugned order on the application for exemption from personal attendance, the learned Magistrate has mentioned that on number of occasions the applicant was absent and particularly, whenever matter was fixed for evidence, he used to remain absent and the matter was prolonged. In these circumstances, I do not find any fault with the order passed by the Magistrate. However, the learned Counsel for the applicant gave an undertaking that on the next date the applicant shall remain present and thereafter he will not seek exemption from personal attendance nor he will seek any adjournment in future, except in the circumstance, which may be beyond his control. Mrs. Deshmukh, learned APP concedes that in view of this undertaking the order to issue warrant may be cancelled.

2. In view of the above undertaking, the applicant shall remain present before the J.M.F.C., Dapoli on the next date and shall not seek exemption from personal attendance nor shall seek any adjournment in the said matter in future, except in the circumstance, which may be beyond his control. In view of this undertaking, the order dated 10/1/2007 issuing N.B.W. against the present applicant stands cancelled.

3. The learned Counsel for the applicant informs that the applicant under the impression that earlier in Criminal Application No. 274/2007, this Court had cancelled the NBW in both the criminal case Nos. 89/2001 and 90/2001 and under that impression he has filed the affidavit before the Magistrate, while in fact the application was restricted to Criminal Case No.90/2001 and warrant in that case was cancelled by this Court on 29/1/2007. In view of the clarification made by the learned Counsel about the said affidavit, the learned Magistrate shall ignore that affidavit and shall not take any action against the applicant.

4. The application stands disposed of in terms of the above directions.

(J.H. BHATIA, J.)